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ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
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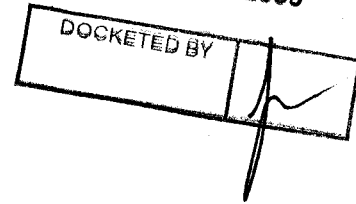
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Commissioner



IN THE MATTER OF INVESTIGATION)
 INTO U S WEST COMMUNICATIONS,)
 INC.'S COMPLIANCE WITH CERTAIN)
 WHOLESALE PRICING REQUIREMENTS)
 FOR UNBUNDLED NETWORK)
 ELEMENTS AND RESALE DISCOUNTS)
 ISSUES)

DOCKET NO. T-00000A-00-0194

RECOMMENDATIONS OF
 COMMISSION STAFF FOR
 ADDITIONAL PHASES AND

I. INTRODUCTION

In accordance with the Arizona Corporation Commission's ("ACC" or "Commission") March 30, 2000 Procedural Order, the Commission Staff hereby files its recommendations for additional phases and issues in this proceeding. The ACC Staff originally moved to reopen the Consolidated Cost Docket¹ to reexamine issues arising as a result of: 1) the United States Supreme Court's decision in *AT&T v. Iowa Utilities Board*, 119 S.Ct. 721 (1999); 2) the District Court for the District of Arizona's decision in *U S WEST v. Jennings*, 46 F.Supp.2d 1004 (D.Ariz. 1999); 3) the May 1, 2000 effective date of the geographic deaveraging requirement contained in 47 C.F.R. Section 51.507(f); and 4) recent decisions of the Federal Communications Commission ("FCC"). AT&T Communications of the Mountain States, Inc. ("AT&T"), MCI Worldcom, Inc., on behalf of its regulated subsidiaries ("MCIW") and Sprint Communications Company, L.P. ("Sprint") filed comments on Staff's motion on or before February 18, 2000 raising additional wholesale pricing issues that should be reviewed in this Docket. ACC Staff

¹ In the Matter of the Petition of American Communications Services, Inc. and American Communications Services of Pima County, Inc. for Arbitration with U S WEST Communications, Inc. of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. Section 252(b) of the Telecommunications Act of 1996, et al, Docket No. U-3021-96-448 et al.

supports inclusion of the additional issues raised by AT&T, MCIW and Sprint in later phases of this case as discussed below.

The Commission's March 30, 2000 Procedural Order provides that Phase I of this proceeding will be a consolidated arbitration focusing upon the establishment of interim geographic deaveraged unbundled network element ("UNE") rates to comply with 47 C.F.R. Section 51.507(f). The comments submitted herein pertain to later phases of this proceeding and are in response to the Hearing Officer's request that parties file "recommendations for additional phases and the corresponding issues along with any deadlines that need to be met as a result of a specific legal requirement." *Id.* at p. 3.

II. DISCUSSION

A. Review of All Wholesale Rates to Determine Compliance with the Reinstated FCC Pricing Rules

At the time the Commission originally set rates for unbundled network elements and interconnection in the Consolidated Cost Docket, the *AT&T v. Iowa Utilities Board* case had not yet been decided by the United States Supreme Court. That decision was released on January 25, 1999. In *AT&T v. Iowa Utilities Board*, the Supreme Court reversed, in part and remanded in part, the Eighth Circuit Court of Appeal's decision, which had vacated large portions of the FCC's rules implementing Sections 251 and 252 of the 1996 Act on jurisdictional grounds. As a result of the Supreme Court's decision, the FCC's rules and regulations that had been vacated by the Eighth Circuit on jurisdictional grounds were subsequently reinstated, including those regulations promulgated under Section 252(d) of the Telecommunications Act of 1996 ("1996 Act") or the pricing provisions of the 1996 Act.

This Commission has not yet undertaken any examination of the UNE and interconnection rates established by it on May 5, 1998, for their compliance with the reinstated pricing provisions of the 1996 Act. The Commission must undertake this

examination and the ACC Staff believes that it would be appropriate to perform this review in the context of this proceeding.

Rates, in addition to the UNE rates, which should be reviewed for compliance with the reinstated FCC rules include those established by the Commission for interconnection, transport and termination, reciprocal compensation and the wholesale discounts. The ACC Staff believes that the review of U S WEST's existing wholesale rates for compliance with the reinstated FCC rules should be done within the context of Phase II of this proceeding.

B. Establishment of Permanent Geographically Deaveraged Wholesale Rates

The Commission has designated Phase I to establish "interim" geographically deaveraged UNE rates to comply with Section 51.507(f) of the FCC's rules and regulations. The Commission has designated the establishment of "permanent" geographically deaveraged UNE rates to be done in Phase II. The Commission will need to determine the scope of this rule as far as its application to other wholesale rates and charges of U S WEST. For instance, the FCC's Stay Order, 4 FCC Rcd 8300 (rel. May 7, 1999) also references the establishment of geographically deaveraged zones for U S WEST's interconnection rates and charges. The ACC Staff believes that the establishment of permanent geographically deaveraged UNE and other wholesale rates, as appropriate, should be undertaken in Phase II of this proceeding.

C. Review of Pricing Issues Remanded by the Federal District Court

The District Court for the District of Arizona's decision in *U S WEST v. Jennings* in May, 1999, remanded several issues back to the Commission for reexamination. The remanded issues included: 1) the four-wire loop price, 2) non-recurring charges, 3) the customer transfer charge, 4) resale discounts (number of discount rates), 5) unbundled subloops (BFR process), 6) the obligation to exercise eminent domain, 7) single point of interconnection, 8) the need for U S WEST to modify

its network, 9) forced recombination of elements, 10) collocation of RSUs, and 11) the most favored nations clause.

While several portions of Judge Panner's May 5, 1999 decision have been appealed to the Ninth Circuit Court of Appeals, others have not and should be reviewed at this time within the context of this proceeding.

Those issues on appeal to the Ninth Circuit Court of Appeals include: 1) cost recovery for vertical features, 2) the 10-day installation interval requirement, 3) the definition of a tandem switch for purposes of call termination compensation, 4) the 4-wire loop rate, 5) non-recurring costs, 6) the appropriate cable sheath mileage factor, 7) geographically deaveraged UNE rates, 8) reciprocal access to poles, ducts, conduits, and rights-of-way, 9) restrictions on the provision of dark fiber, 10) resale of Centrex restriction, 11) the single point of interconnection issue, and 12) U S WEST's obligation to collocate remote switching units.

Issues not being addressed by the Ninth Circuit which the Commission should examine at this time include: 1) the need to establish additional resale discount rates, after considering the range of cost savings for different categories of services, 2) the customer transfer charge, 3) an appropriate compensation mechanism for ISPs and, 4) UNE platform rates.

The Commission Staff supports review of these issues, in particular the wholesale discount rate issue, in Phase II.

D. Review or Establishment of Wholesale Rates as a Result of Subsequently Issued FCC Orders

1. UNE Remand Order²

The FCC's UNE Remand Order was released on November 5, 1999 and addressed issues remanded to it in *AT&T v. Iowa Utilities Board*.³ In its UNE Remand

² *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order (rel. November 4, 1999)("UNE Remand Order").

Order, the FCC concluded that the following network elements must be unbundled, in some instances subject to certain terms and conditions which will not be discussed herein: 1) the loop (including high capacity lines, xDSL-capable loops, dark fiber and inside wire), 2) subloops, 3) network interface devices (NID), 4) circuit switching, 5) packet switching, 6) interoffice transmission facilities (including shared transport where unbundled local circuit switching is provided), 7) signaling and call-related databases (including call-related databases such as Line Information database ("LIDB), Toll Free Calling database, Number Portability database, Calling Name ("CNAM") database, Operator Services/directory Assistance databases, Advanced Intelligent Network (AIN) databases, and the AIN platform and architecture), and 8) operational support systems.

The Commission Staff supports addressing all issues arising from the FCC's UNE Remand Order in Phase II of this proceeding.

2. Advanced Services First Report and Order (Collocation)⁴

Released on March 31, 1999⁵, the Advanced Services First Report and Order established additional national rules for collocation applicable to all telecommunications services, including advanced services and traditional voice services. The Order established, *inter alia*, alternative collocation arrangements to promote the deployment of advanced services including: 1) the use of shared collocation cages,

³ The UNE Remand Order became effective 30 days after publication in the Federal Register which occurred on January 18, 2000. The effective date was February 17, 2000. The following requirements, however, were effective 120 days after publication in the Federal Register: the requirement to provide access on an unbundled basis to dark fiber as set forth in Section 51.319(a)(1); the requirement to provide access on an unbundled basis to subloops and inside wire as set forth in Section 51.319(a)(2); the requirement to provide access on an unbundled basis to packet switching in the limited circumstances set forth in Section 51.319(c)(3)(B); the requirement to provide access on an unbundled basis to dark fiber transport as set forth in Section 51.319(d)(1)(B); the requirement to provide access on an unbundled basis to the Calling Name Database, 911 Database, and E911 Database as set forth in Section 51.319(e)(2)(A); and the requirement to provide access on an unbundled basis to loop qualification information as set forth in Section 51.319(g). These requirements became effective on April 17, 2000.

⁴ *In the Matter of the Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order (rel. March 31, 1999) ("Advanced Services First Report and Order").

⁵ The Advanced Services First Report and Order became effective 30 days after publication in the Federal Register or 30 days from April 30, 1999. This would make the effective date June 1, 1999.

within which multiple competing providers' equipment could be either openly accessible or locked within a secure cabinet; 2) the option to request collocation cages of any size without any minimum requirement, so that competing providers will not use any more space than is reasonably necessary for their needs, and 3) physical collocation that does not require the use of collocation cages ("cageless" collocation). *Id.* at paras. 41-43. When space is legitimately exhausted in particular LEC premises, the ILEC is required to permit collocation in adjacent controlled environmental vaults or similar structures to the extent technically feasible. *Id.* at para. 44.

In most instances, the FCC relies upon the state commission to ensure that the prices are appropriate. "We rely on state commissions to ensure that the prices of these smaller collocation spaces are appropriate given the amount of space in the incumbent LEC's premises actually occupied by the new entrants." *Id.* at para. 43. "We expect state commissions will determine the proper pricing methodology to ensure that incumbent LECs properly allocate site preparation costs among new entrants." *Id.* at para. 51. Incumbent LECs must allocate space preparation, security measures, and other collocation charges on a pro-rated basis so the first collocater in a particular incumbent premises will not be responsible for the entire cost of site preparation.

The Commission Staff recommends inclusion of the issues raised in the FCC's Advanced Services First Report and Order in either Phase II or Phase III.

3. **Advanced Services Third Report and Order (Line Sharing)**⁶

The FCC's Line Sharing⁷ Order amended its unbundling rules to require incumbent LECs to provide unbundled access to a new network element, the high

⁶ *In the Matter of the Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Third Report and Order (rel. December 9, 1999) ("Advanced Services Third Report and Order").

⁷ The provision of xDSL-based service by a competitive LEC and voiceband service by an incumbent LEC on the same loop is frequently called "line sharing."

frequency portion of the local loop.⁸ This will enable competitive LECs to compete with incumbent LECs to provide to consumers xDSL-based services through telephone lines that the competitive LECs can share with the incumbent LECs. *Id.* at para. 4. The Commission Staff supports inclusion of these issues in Phase II of this proceeding.

4. Reciprocal Compensation Order⁹

The FCC's Reciprocal Compensation Order is no longer binding in many respects with the recent decisions by both the D.C. Circuit Court of Appeals and the Fifth Circuit Court of Appeals.¹⁰ Those decisions reversed the FCC's ruling that ISP bound traffic was interstate in nature, which was a fundamental underpinning of the remainder of the FCC's findings. However, even assuming the underlying validity of the FCC's Reciprocal Compensation Order, State commissions were authorized thereunder to treat these calls as local and assess reciprocal compensation as an interim inter-carrier compensation mechanism pending the adoption of federal rules. The States may also devise another inter-carrier compensation mechanism for this traffic pending the adoption of federal rules.

Testimony in a recent arbitration proceeding before the Commission indicates that the reciprocal compensation rates need to be addressed again and more appropriate rates established. The Commission will be reviewing the rates for compliance with the FCC rules anyway. While the Commission has not yet determined whether ISP bound traffic should be subject to reciprocal compensation, nothing would preclude the Commission

⁸ The Advanced Services Third Report and Order became effective 30 days after publication in the Federal Register which occurred on January 10, 2000. The rules thus became effective on February 9, 2000. The FCC stated that incumbents should be able to provide line sharing within 180 days of release of its Order. *Id.* at para. 13. The FCC also noted at fn. 19, "[a]lthough, in many areas, incumbent LECs are already providing both voice and xDSL services on the same loop, we believe that incumbents require approximately six months to adapt their 'back office' systems to comply with the two-carrier line sharing requirements set out in this Order." Six months or 180 days from the release date of the Order would be approximately June 9, 2000, the date upon which the ILEC should be able to provide line sharing.

⁹ *In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Declaratory Ruling, (rel. Feb. 26, 1999).

¹⁰ *Bell Atlantic v. FCC*, 2000 WL 273383 (D.C. Cir. March 24, 2000); *Southwestern Bell Telephone Company v. Public Utilities Commission*, 2000 WL 332062 (5th Cir. March 30, 2000).

from examining a more appropriate inter-carrier compensation structure for these calls at the same time it reviews the existing rate structure for local calls. This is particularly true, since with the recent Court decisions, the adoption of rules by the FCC will likely be delayed. Regardless of the classification given to ISP bound calls, interstate or intrastate, some form of inter-carrier compensation is appropriate, and this Commission has the authority to impose it.

E. Review of Wholesale Rates and Non-Pricing Provisions of U S WEST's Statement of Generally Available Terms and Conditions

Both AT&T and MCIW support review of the new rates contained in U S WEST's revised Statement of Generally Available Terms and Conditions ("SGAT") in this proceeding. The Commission Staff agrees. This is consistent with Decision No. 61624 which allowed U S WEST's SGAT to take effect pending further review by the Commission pursuant to Section 252(f)(4) of the 1996 Act. In Decision No. 61624, Ordering Paragraph 4 required U S WEST to file cost studies in support of any new rates contained in the SGAT for Commission determination whether the rates comply with the 1996 Act, Commission Rules and all applicable laws.

There are also many non-cost provisions in the SGAT, however, that have not yet been reviewed by the Commission for compliance with the 1996 Act. The Commission should review both the cost and non-cost provisions of the SGAT for compliance with the 1996 Act within the context of this proceeding. Staff supports a separate Phase III of this docket devoted to a review of both the cost and non-cost provisions of the SGAT, to the extent they have not already been reviewed in an earlier phase of this proceeding.

F. Issues Remanded from the Pending Ninth Circuit Appeal

Phase III should also include any issues remanded by the Ninth Circuit Court of Appeals as a result of the appeal from Judge Panner's Order currently pending before the Ninth Circuit, and any issues remanded from subsequent judicial decisions resulting from appeals of Commission decisions now pending before the District Court.

III. CONCLUSION

The Staff of the Arizona Corporation Commission respectfully requests that the issues set forth above be addressed in later phases of this proceeding.

RESPECTFULLY submitted this 24th day of April, 2000.

By 

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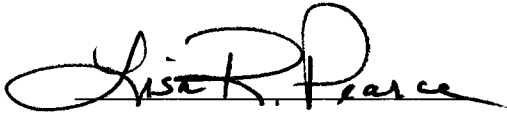
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A handwritten signature in black ink, appearing to read "Lisa R. Pearce". The signature is stylized with a large, looped initial "L" and "P".

Lisa R. Pearce